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Court of Appeals sanctions prepaid-fee legal plans in ethics revision

Md. allows prepaid-fee legal plans

By ROBERT E. WADE

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Annapolis—“Qualified” prepaid legal plans were sanctioned by the Maryland Court of Appeals in new rules unveiled here yesterday.

The court adopted changes to the lawyer's code of professional responsibility that will allow attorneys to participate in the plans. Legal sources said the rules were similar to those adopted last year by the American Bar Association.

The changes were adopted as an “emergency measure,” allowing them to go into effect on New Year's Day, avoiding a drawn-out advertising procedure.

That step was taken because local lawyers are already participating in several such plans, according to the order made public yesterday.

Under the old rules, lawyers were in violation of ethical standards adopted by the court and were liable for disciplinary action, though no such action was ever taken, legal sources said.

The court also adopted a slight change in the rules governing advertising, and publicity that will allow prepaid plans the use of “dignified commercial publicity.” But the plans will not be permitted to advertise the names of the attorneys connected with them.

Legal sources said they thought that was an insignificant change in the rules governing advertising by lawyers, an issue that is now before the Supreme Court.

The language adopted by the court set-

ting down the conditions under which the plans can operate was vague. A leading expert in the field, Sandy DeMent, of the National Consumer Center for Legal Services in Washington, said the language appears to allow both profit-making and nonprofit plans to operate, but under different procedures.

The rules would allow nonprofit organizations, such as labor unions, to organize plans with their own sets of attorneys.

Profit-making plans, on the other hand, appear under the rules to be limited to so-called “open panel” procedures. Ms. DeMent said such a plan would let a person choose a lawyer on his own in the same way that a person covered by a health insurance plan can choose his or her own doctor.

The restrictions will have little effect, she said, because most of the plans now operating are nonprofit.

The plans normally offer a wide range of legal services to participants, usually in return for a monthly payment or a payroll deduction. Since 1971, the federal government has allowed such services to be negotiated by unions as fringe benefits.

One attraction the plans have is for middle-income people who earn too much for publicly assisted legal help, but who cannot afford huge legal bills.

Legal sources said the court was particularly concerned that lawyers participating in a prepaid plan be able to maintain independence from the organization operating the plan. The court added a section to the canons encouraging participation but warning that “such participation should at all times be in accordance with

the basic tenets of the profession: independence, integrity, competence and devotion to the interests of individual clients.”

One of the disciplinary rules adopted would prevent lawyers or anyone else from organizing a prepaid plan for the “primary” purpose of making money. But sources said the use of the word “primary” was vague enough to allow attorneys to claim they had organized the plan to help people as the primary reason.

The rules also require a plan to send a yearly report to the Maryland State Bar Association on a form provided by the association. That requirement might represent the first major stumbling block for attempts to regulate the plans in the state.

In the Employment Retirement Income Security Act of 1974, Congress exempted legal service plans from state controls. The act requires that annual financial reports be filed with the United States secretary of labor.

Ms. DeMent said she had some indications from the Labor Department that it would rule the plans entirely exempt from state control.

Richard J. Scupi, director of Laborer's Legal Services, a nonprofit plan operated by the Laborer's District Council of Washington, said he would not challenge the reporting requirement as long as it required little effort or expense on his part to fulfill the rule.

The Court of Appeals adopted the new rules Thursday afternoon, according to James H. Norris, Jr., clerk of the court. Mr. Norris said all seven judges signed the order, making the changes a unanimous decision of the court.

Free legal consultation for teachers

Okayed by State Bar Association

By THEODORE W. HENDRICKS
The Maryland State Bar Association agreed yesterday to enter a prepaid legal services plan with state teachers that is designed to provide 35,000 teachers with a half-hour of free legal consultation on personal problems.

The vote of the bar association cleared the way for presentation of the legal services plan to the Maryland State Teachers Association later this week.

Charles Wheatley, of the state teacher's association, said the type of prepaid legal plan under consideration would, if adopted, be the largest prepaid plan in the country.

Prepaid legal plans are designed to provide access to the legal system for middle-income consumers, usually those who belong to business groups, unions or professional associations.

As many as five million Americans have joined prepaid legal programs in the past five years. In Maryland, the city's Classified Municipal Employees Association joined a plan in May; one of the largest groups so far to enter such a plan.

Bar associations have been slow in the past to accept the plan. Some lawyers argued that plans lead to pre-selection of lawyers, rather than allowing persons full scope to make their own choice.

Under the plan, agreed to yesterday, lawyers who wish to join the plan will pay \$50, a sum that will be used for a \$10,000 administration fund. The teacher's association will put up \$75,000, and in return members will get the right to free initial consultation with any lawyer in the plan.

Arthur C. Strasburger, of the bar association, said that the plan will continue for 18 months and include for further recommendation, including whether it should continue in the future.

The vote on the resolution approving the start of the plan was taken at the business meeting of the Maryland Bar Association, which concluded its annual three-day mid-winter gathering at the Hunt Valley Inn.

James H. Cook, the president of the bar association, welcomed members of the association, which represents an estimated 4,000 lawyers in the state.

The lawyers attended conferences on the new federal tax law, heard a discussion of the new rape law and reviewed real property law changes, in addition to other activities.

Also adopted at the business meeting was a resolution that asked the General Assembly to fill the gap in professional legal liability insurance, which may occur this year when a private company ends coverage.

The insurance program is patterned after that made available to physicians. Herbert H. Hubbard, chairman of the bar committee that studied the legislation, said that efforts are still being made to find another private carrier.

Daniel O'C. Tracy, Jr., the chairman of a committee to study ways to upgrade the image of lawyers in the community, said a conference last month on the subject found a "communications problem" between laymen and legal practitioners.

Mr. Tracy promised a full report on the recommendations of his committee at the June meeting of the bar association. Earlier in the bar association meeting, Richard C. Wertz, the director of the Governor's Committee on Law Enforcement, told a panel of lawyers that state prisons will be overcrowded for at least five more years.

Mr. Wertz admitted that the state Department of Correction had been "caught off balance" by a sudden rise in the prison population. By national standards, Maryland prisons have long been overcrowded.

Mr. Wertz said that Governor Mandel will release this week the report of his committee, which studied overcrowding. The report is expected to recommend better parole procedures, building a medium-type prison and community correction centers.

The committee's director said that the use of the City Jail to house people already sentenced to state institutions will have to be continued. The city Jail Board has strongly objected to this arrangement, but recently agreed to accept a maximum of 800 state prisoners.

At another panel discussion, Sandra O'Connor, the Baltimore county state's attorney, said the state's new rape and sexual offense law was designed to allow police to make arrests for the actual sexual act committed.

Mrs. O'Connor said this included not only rape by force, but touching for sexual purposes that is without consent. The prosecutor added that women are not the only beneficiaries of the newly broadened act.

According to cases now under investigation, Mrs. O'Connor said; men could successfully complain about a sexual offense in which they were victimized by women.